FILE COPY

In the Supreme Court

OF THE

United States

Supreme Court, U. S.
FILED
JAN 2 1946
CHARLES ELMORE CROPLEY
CLERK

OCTOBER TERM, 1945

No. 274

F.-O. ROBERTSON,
Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

BRIEF FOR APPELLEE.

Appeal from the Superior Court of the State of California, in and for the County of Ventura.

M. ARTHUR WAITE,
District Attorney of Ventura County, State of California.
JULIEN G. HATHAWAY,
Deputy District Attorney of Ventura County, State of California.
ROBERT W. KENNY,
Attorney General of the State of California.
T. A. WESTPHAL, JR.,
Deputy Attorney General of the State of California.
HAROLD B. HAAS,
Deputy Attorney General of the State of California.
Attorneys for Appellee.

H. F. ORR,
Ventura, California.
Of Counsel.

Subject Index

	Page
Statement of the Case	1
Argument	4
Statues Involved	4
I.	
The federal questions before this court	4
II.	
The Southeastern Underwriters case did not invalidate state laws regulating the conduct of the business of insurance	5
III.	
Section 1642 of the California Insurance Code is a valid exercise of the police power of the State of California	6
IV.	
Section 703(a) of the California Insurance Code is a valid exercise of the police power of the State of California	10
V.	
The California statutes here involved do not discriminate against interstate commerce	18
VI.	
The provisions of the California Insurance Code under which the society for which appellant acted is excluded from admission to do business in California are valid exercises of the police power of the State of California	19
VII.	
Congress has shown that its intention always has been and continues to be, until Congress shall otherwise specifically enact, that the states may regulate and tax the business of insurance	43
Conclusion	49

Table of Authorities Cited

Cases	Pages
Bradley v. Pub. Util. Comm. (1933) 289 U. S. 92	7, 15
California v. Thompson (1941) 313 U. S. 109	7, 9, 10
Caminetti v. Guaranty Union Life Ins. Co. (1942) 52 Cal. App. (2d) 330, 126 Pac. (2d) 159	35
Caminetti v. State Mutual Life Insurance Co. (1942) 52 Cal. App. (2d) 321, 126 Pac. (2d) 165	35
Caminetti v. National Guaranty Life Ins. Co. (1942) 52 Cal. App. (2d) 835, 126 Pac. (2d) 170	35
Concordia Ins. Co. v. Illinois (1934) 292 U. S. 535	10
Cooley v. Board of Wardens of the Port of Philadelphia (1851) 12 How. 299	43
Duckworth v. Arkansas (1941) 314 U. S. 390	7, 15
German Alliance Ins. Co. v. Lewis (1914) 233 U. S. 389	6, 13, 38
Hadacheck v. Sebastian (1915) 239 U. S. 394	38
Hall v. Geiger-Jones Co. (1917) 242 U. S. 539	9
Hartford Accident & Indemnity Co. v. Illinois (1936) 298 U. S. 155	7
Hoopeston Canning Co. v. Cullen (1943) 318 U. S. 313	13, 14
International Shoe Co. v. Washington, decided December 3, 1945, No. 107, O. T. 1945	14, 47
LaTourette v. McMaster (1919) 248 U. S. 465	6, 13, 38
Lincoln National Life Ins. Co. v. Read (1945) ..... U. S. ....., 89 L. Ed. 1250	14
McCulloch v. Maryland (1819) 4 Wheat. 316	37
Missouri v. Kansas Natural Gas Co. (1924) 265 U. S. 298	43
National Ins. Co. v. Wanberg (1922) 260 U. S. 71	6, 13, 38
O'Gorman & Young v. Hartf'd Ins. Co. (1931) 282 U. S. 251	14
Osborn v. Ozlin (1940) 310 U. S. 53	6, 13, 38

Pages

Parker v. Brown (1943) 317 U. S. 341 ..... 39, 40
People v. Merrill, 24 Cal. App. 206 14
Portnoy v. Superior Court, 20 Cal. (2d) 375, 125 P. (2d) 487 3

Robbins v. Shelby County Taxing District (1887) 120 U. S. 489 43

S. C. Hwy. Dept. v. Barnwell Bros. (1938) 303 U. S. 177 39
Simpson v. Shepard (1913) 230 U. S. 352 ..... 44, 45
Southern Pac. Co. v. Ariz. (June 18, 1945) ..... U. S. ....., 65 S. Ct. 1515 ..... 11, 39, 48
State Farm etc. Ins. Co. v. Carpenter, 31 C. A. (2d) 178 14
State Farm Mutual Ins. Co. v. Duel (1945) 324 U. S. 154 13

U. S. v. Southeastern Underwriters Assn. (1944) 322 U. S. 533 ..... 5, 7, 14, 39, 41, 45, 50
Union Brokerage Co. v. Jensen (1944) 322 U. S. 202 ..... 7, 14, 39

West v. Kansas Natural Gas Co. (1911) 221 U. S. 229 43

Codes

Civil Code:
Sections 437-452h 24
Sections 453d-453t 24

Insurance Code:
Section 36 23
Section 700 22
Section 703 1
Section 703(a) 1, 4, 5, 10, 12, 18
Section 730 et seq. 18
Section 736 18
Section 900 et seq. 18
Section 1639 6
Section 1642 ..... 2, 4, 5, 6, 9
Section 1643 6
Section 1648.5 6
Section 1674 6
Section 1678 6
Section 1760 20

Pag

Sections 1760.5, 1763, 1775.5, 1776.....
Section 1765.....
Section 1775.5.....13,
Section 10490, et seq.....
Section 10510.....
Sections 10739, 10740.....
Sections 10739-10744.....
Section 10810.....20,
Section 10818.....19, 21, 27, 31, 37,
Section 10870.....
Sections 10950 to 10953.12.....

California Statutes

Cal. Stats. 1907, p. 146.....
Cal. Stats. 1911, pp. 1270-1271.....
Cal. Stats. 1937, p. 2033.....

Stats 1935, pp. 667, 678.....30,
Stats. 1935, ch. 283, pp. 1002, 657.....
Stats. 1937, ch. 726, p. 2024.....
Stats. 1937, p. 1666.....
Stats. 1939, ch. 321, p. 1609.....31,

Federal Statutes

59 Stat. 33.....45,

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 274

F. O. ROBERTSON,
Appellant,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA.

BRIEF FOR APPELLEE.

Appeal from the Superior Court of the State of California, in and for the County of Ventura.

STATEMENT OF THE CASE.

The facts stated in appellant's brief are incomplete.

This case arose upon a complaint in the Justice's Court of Ventura Township, California, charging appellant, in two counts, (1) with acting without a license as an agent for an insurer not admitted to do business in California, in soliciting and selling a policy contrary to §703(a) of the Insurance Code of California,[1] and (2) with soliciting and selling a policy of insurance without being licensed

[1]Deering's California Codes, Insurance Code of California, §703.

to act as an insurance agent or solicitor, contrary to th provisions of §1642 of the Insurance Code of California.

These sections provide:

"703. Except when performed by a surplus lin broker, the following acts are misdemeanors whe done in this State:

(a) Acting as agent for a nonadmitted insurer i the transaction of insurance business in this State."

"1642. A person shall not act as an insuranc agent, broker or solicitor until a license is obtaine from the Commissioner, authorizing such person s to act."

The testimony at the trial established that A. J. O'Lein a resident of Ventura, California, received a postal car through the mails from the First National Benefit Societ of Phoenix, Arizona (R. 7, 25). The card was an ordinar business reply card bearing a printed request to sen details of the Society's "Gold Seal" policies. Mr. O'Lei signed and mailed the card to the Society (R. 7).

Thereafter, appellant, a resident of California (R. 27 28), called at Mr. O'Lein's home, stated that he had re ceived the inquiry card and that he represented th Society (R. 7-8). He was invited into the house, sat down produced a form of policy in the Society, and proceede to perform the usual services of an insurance agent o solicitor (R. 9, 20); that is to say, he explained the term of the policy, its benefits, its costs; "he explained th insurance policies as any insurance man would and don't know,—I was hard to convince" (R. 9, 20). Havin persuaded the O'Leins to buy policies, he filled out th application blanks for their signatures (R. 17, 20), fille

out and gave to each a receipt for the initial membership fee or premium (R. 11, 17, 20), received a check payable to himself for the initial premium on both policies (R. 10), and later cashed this check in a local bank and received the proceeds (R. 10).

Thereafter the O'Leins each received a policy by mail from the Benefit Society (R. 12, 17-18).[2]

The evidence further established that the Society was not an insurance company admitted to do business in California (R. 22); that appellant had no license of any kind to act as an insurance agent, solicitor, or broker in California (R. 22).

Appellant was found guilty and sentenced to pay a fine of $100 on each count (R. 38). He appealed to the Superior Court of Ventura County, alleging that sections 703(a) and 1642 of the California Insurance Code are invalid under the Commerce Clause and the Fourteenth Amendment of the Federal Constitution.[3] That Court affirmed the judgment (Opinion, R. 41; Judgment, R. 44), and, being the State Court of last resort in cases of this type (*Portnoy v. Superior Court*, 20 Cal. (2d) 375, 125 P. (2d) 487), the appeal to this Court followed.

---

[2]The postal card, check, receipts and policies are in evidence (R. 25-34). No witnesses were called or documentary evidence produced by appellant.

[3]Appellant mentioned the Fourteenth Amendment in his appeal in the Court below (R. 4), and in his specifications of errors in this Court (Appellant's Opening Brief, 9). However, no question under the Fourteenth Amendment was urged or passed upon in the Court below, and appellant's brief in this Court not only confines its argument to the Commerce Clause, but is specific that any other point is abandoned (Appellant's Opening Brief, 36-37).

STATUTES INVOLVED.

The statutes, the validity of which is involved, are sections 703(a) and 1642 of the California Insurance Code, above quoted (Deering's California Codes, Insurance Code of California, §§703(a) and 1642). Other related statutory provisions are printed in the Appendix to this brief.

ARGUMENT.

I.

THE FEDERAL QUESTIONS BEFORE THIS COURT.

It is important at the outset to define the federal questions before the Court on this appeal. Appellant's brief argues in general the invalidity of the California Insurance Code and refers to a number of sections not involved in this appeal. The Insurance Code of California is a comprehensive document hundreds of pages long. This Code has been built up for the protection of the people of California over a period of more than eighty years. It is the result of the action of many legislatures that have been carefully and comprehensively informed by the study of experts, the painstaking annual reports of the State Insurance Commissioner and his staff, and the experience of the people. Appellee is confident that none of the provisions of the Code infringes the Federal Constitution or laws.

However the sole question before this Court in the case at bar is whether two of the sections of this Code are in violation of the Commerce Clause of the Federal Constitution as applied to the facts in this record. These two

sections simply require (§1642) that no person shall act as an insurance agent or solicitor until he has obtained a license so to act, and (§703(a)) that no person shall act as an agent for an insurer not admitted to do business in California unless he is licensed as a surplus line broker.

II.

THE SOUTHEASTERN UNDERWRITERS CASE DID NOT INVALIDATE STATE LAWS REGULATING THE CONDUCT OF THE BUSINESS OF INSURANCE.

At the outset of this brief it is also important to point out that the constitutionality of statutes regulating insurance, similar to the statutes involved in the case at bar, has been sustained by this Court over and over again in adjudications extending over many years. Appellant's contentions herein are based solely upon the proposition that *U. S. v. Southeastern Underwriters Assn.* (1944) 322 U. S. 533, invalidated state laws regulating the conduct of the business of insurance. The opinion of this Court in that case is a complete answer. It specifically and emphatically states that its decision has no such effect, and it carefully reviews and approves the very principles under which such regulatory statutes are valid as appropriate exercises of the police power of the states. (See the discussion of the *Southeastern Underwriters* case at page 41 et seq. of this brief.)

III.

§1642 OF THE CALIFORNIA INSURANCE CODE IS A VALI EXERCISE OF THE POLICE POWER OF THE STATE O CALIFORNIA.

In the appendix to this brief we quote pertinent pr visions of the California Insurance Code[4] relating to th license requirement provision of §1642. The purpose of th law was declared by the legislature: "to protect the publi by requiring and maintaining professional standards conduct on the part of all insurance agents" (§1639). Th requirements for obtaining a license are, simply, that a application shall be made on a written form prescribed b the Commissioner describing the kinds of insurance whic the applicant desires to transact (§1643); the applican must be a citizen or one who has applied for citizenshi and must have reached his majority (§1648.5); he mus pass an examination as to his qualifications (§1674) an pay a filing fee of $4 and an examination fee of $5 (§1678 Upon completing these requirements the license is issue if the Commissioner is satisfied that the applicant is prop erly qualified and intends in good faith to carry on th business (§1649). The statute applies without discrimina tion to every agent, regardless whether he transacts bus ness for a domestic or a foreign insurer. It is exactl what it appears to be: a statute designed to safeguar the members of the public from misinformation, frau and overreaching in effecting insurance—a business lon held to be one affected by a public interest and so closel related to the public welfare as to invoke and requir meticulous governmental regulation.[5]

---

[4]Appendix, pp. i to v.

[5]*German Alliance Ins. Co. v. Lewis* (Kansas 1914) 233 U. S. 38 412, 415;
LaTourette v. McMaster (1919) 248 U. S. 465, 467;
National Ins. Co. v. Wanberg (1922) 260 U. S. 71, 73;
Osborn v. Ozlin (1940) 310 U. S. 53, 65-66.

Regardless of what may be the scope of *U. S. v. Southeastern Underwriters Assn.* (1944) 322 U. S. 533, the validity of such provisions does not present a substantial federal question.

California v. Thompson (1941) 313 U. S. 109;
Union Brokerage Co. v. Jensen (1944) 322 U. S. 202;
Hartford Accident & Indemnity Co. v. Illinois (1936) 298 U. S. 155;
Duckworth v. Arkansas (1941) 314 U. S. 390;
Bradley v. Pub. Util. Comm. (1933) 289 U. S. 92.

California v. Thompson, supra, involved the validity of a statute of California—indistinguishable in principle from the licensing statute involved in the case at bar—requiring the licensing of transportation agents negotiating for interstate transportation. This Court pointed out that the statute in question (pp. 112-113)

> "* * * is not shown to be other than what on its face it appears to be, a measure to safeguard the members of the public desiring to secure transportation by motor vehicle, who are peculiarly unable to protect themselves from fraud and overreaching of those engaged in a business notoriously subject to those abuses."

The Court then reviewed the applicable principles of law (pp. 113-114):

> "As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has

not exercised its power, even though the regulation affects interstate commerce. * * * it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce, but which because of their local character and their number and diversity may never be adequately dealt with by Congress. Because of their local character, also, there is wide scope for local regulation without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause. Notwithstanding the Commerce Clause, such regulation in the absence of Congressional action has, for the most part, been left to the states by the decisions of this Court, subject only to other applicable constitutional restraints. * * *

Where, as here, Congress has not entered the field, a state may pass inspection laws and regulations, applicable to articles of interstate commerce, designed to safeguard the inhabitants of the state from fraud, provided only that the regulation neither discriminates against nor substantially obstructs the commerce."

And the Court pointed out that such regulation by the state clearly is valid in the absence of specific Congressional regulation (p. 115):

"Fraudulent or unconscionable conduct of those so engaged which is injurious to their patrons, is peculiarly a subject of local concern and the appropriate subject of local regulation. In every practical sense regulation of such conduct is beyond the effective reach of Congressional action. Unless some measure of local control is permissible, it must go largely un-

regulated. In any case, until Congress undertakes its regulation, we can find no adequate basis for saying that the Constitution, interpreted as a working instrument of government, has foreclosed regulation, such as the present, by local authority."

Each of the other decisions cited above is equally pertinent and demonstrates the complete want of merit in appellant's attack upon section 1642. That section, like the licensing provisions involved in the *Thompson* case, is simply a nondiscriminatory measure, designed to safeguard the members of the public in a matter of vital public interest.

Compare *Hall v. Geiger-Jones Co.* (1917), 242 U. S. 539.

The facts in the instant case illustrate the appropriateness of such regulation. Appellant appeared at the home of California citizens in the capacity of an insurance agent or solicitor. Contrary to appellant's statement (Appellant's Opening Brief, 22), his activities went far beyond the mere "filling in of the application." He "explained the insurance policies as any insurance man would" (R. 9); explained the "benefits of the policy" (R. 20); received premium payments in a check made out to his order and cashed that check over his personal endorsement (R. 10). The O'Leins, under the law of California, were warranted in assuming that he was qualified to act as an agent in this transaction—competently and honestly. State regulation of such activities clearly is valid under the foregoing decisions.

IV.

SECTION 703(a) OF THE CALIFORNIA INSURANCE CODE I A VALID EXERCISE OF THE POLICE POWER OF TH STATE OF CALIFORNIA.

The situation with respect to §703 (a) is identical i all substantial respects with that obtaining in respect t §1642 discussed above. The provisions of the Californi statutes related to §703(a) are copied in the Appendix p. v et seq. The Insurance Code makes it a misdemeano for any person to act as an agent for nonadmitted insurer in the transaction of insurance business in Californi unless he shall first have obtained a surplus line broker' license (section 703(a)). Upon application this license i issued by the Commissioner if he finds that the applican is "trustworthy and competent to transact an insuranc brokerage business in such manner as to safeguard th interest of the insured" (section 1765), and upon the de livery to the Commissioner of a faithful performance bon in the sum of $5,000 and a filing fee of $50 (section 1765). The requirement of such a bond was expressly approved in *California v. Thompson* (1941) 313 U. S. 109, quoted supra at page 7. While the $50 filing fee is larger than the $4 fee required of an agent transacting business for admitted insurers (section 1678), it obviously is not dis proportionate to the expenses of administration. (See page 16, et seq. of this brief.)

In any event, appellant has failed to show that there is any discrimination.[6] He contends merely that the stat-

[6] "By reason of the presumption of validity which attends legislative and official action one who alleges an unreasonable discrimination must carry the burden of showing it" (*Concordia Ins. Co. v. Illinois* (1934) 292 U.S. 535.

ute is void on its face. The decisions cited in the preceding subdivision of this brief are clearly to the contrary.

Appellant also refers to the provisions of §§1763 and 1775.5. We are not certain from appellant's general reference to these sections (Appellant's Opening Brief, 30) whether their validity is intended to be argued or attacked in the brief, but if so any such contention is without merit.

Section 1763 (Appendix, p. v) provides in substance that insurance can be effected with nonadmitted insurers (unless effected directly between the insurer and the insured—see page 13 of this brief) only if it is so-called "surplus line insurance," that is, insurance which cannot be procured from a majority of the admitted insurers, and is not placed with the nonadmitted insurer for the purpose of procuring a rate lower than that which will be accepted by any admitted insurer.

The constitutionality of this section was neither challenged in, nor considered nor passed upon by, either Court below. Nor was its validity necessarily involved in the decision. So far as this record shows, the life insurance sought to be effected in this case might or might not have been procurable from admitted insurers. Indeed, in so far as the record has any bearing on the point, there is a suggestion that the insurance would not have been so procurable and appellant himself so infers.[7] If this

---

"• • • in their application state laws will not be invalidated without the support of 'relevant factual material which will afford a sure basis' for an informed judgment" (*Southern Pac. Co. v. State of Arizona* (June 18, 1945) U.S. , 65 S.Ct. 1515).

[7]Appellant's Opening Brief, 6, 13.

were so, the insurance would have fallen within the surplus line exception and appellant, had he obtained the license, could have acted as agent in the transaction. Accordingly, so far as this record shows, §1763 in no way has been applied to appellant or his business, and its validity, not challenged in the Courts below, is not involved in this case.

While the validity of this provision is not before this Court, we wish to emphasize that no basis exists for appellant's criticism (Appellant's Opening Brief, 32-33). The statute is designed (1) to make available to the public insurance not ordinarily written and, in particular, not available from admitted companies, but at the same time (2) to protect the insuring public from fly-by-night companies who are not required to conform to the financial and other safety requirements of the state laws, and who, therefore, seek to sell unsafe insurance at unsound rates. Most of these cut-rate policies contain the deceptive small type printed provisions for additional assessments.[8]

In so far as this phase of the matter is concerned, Section 703(a) of the Insurance Code is obviously designed to protect the people of California from having to deal with agents who have not, and whose companies have not, met the standards that the California legislature has set as to solvency, integrity of policy contracts, and related matters directly affecting the public welfare. Maintenance of these standards is clearly within the police power of the state.

---

[8]See the policy in this case, third paragraph of printed "Additional Provisions." R. 31.

See,

German Alliance Ins. Co. v. Lewis (1914) 233 U. S. 389;

LaTourette v. McMaster (1919) 248 U. S. 465;

National Ins. Co. v. Wanberg (1922) 260 U. S. 71;

Osborn v. Ozlin (1940) 310 U. S. 53;

Hoopeston Canning Co. v. Cullen (1943) 318 U. S. 313;

State Farm Mutual Ins. Co. v. Duel (1945) 324 U. S. 154.

This proposition is further discussed, and the justification for California's regulatory statutes demonstrated, under Heading VI of this brief. (page 19 et seq.)

Further, in this connection, we emphasize that California has no prohibition against any nonadmitted company effecting any type of insurance, provided it is negotiated directly between the citizen and the company (§1760). The restrictions in the law apply only to the types of insurance which may be effected by *agents*. The appropriate exercise of the police power in this regard is evident. The ordinary citizen, confused by the complicated and multiple provisions of insurance policies, ordinarily relies upon the representations of the agent, in the absence of which he might himself examine and analyze the policy. The agent, if unscrupulous, is therefore in a position easily to deceive and defraud the public.

Turning to the provisions of §1775.5 (Appendix, p. vii), this section imposes upon the business of a surplus lines broker a tax, payable each July 1, equal to three per cent of the gross premiums upon business done by him during each calendar year. The validity of this provision, also;

is not before the Court in this case. It was neither challenged in, nor considered or passed upon by, either Court below. The sole statute here involved is the one which requires appellant to obtain a license, upon the payment of a nominal fee and the successful completion of an examination as to honesty and competency. Neither §1775.3 nor any other section of the Code imposes upon him a tax in connection with obtaining that license. If after obtaining such license and, at the close of the next fiscal year, a tax under §1775.5 becomes payable, the law of California provides an adequate remedy by suit in the California Courts.[9] In such suit appellant may raise any question he desires concerning the validity of such tax. That question may then be determined on the basis of the application of the statute to the pertinent facts. It is clear, we believe, under the decision of this Court in *U. S. v. Southeastern Underwriters Association* (1944) 322 U. S. 533, and under the provisions of Public Law No. 15,[10] that the validity of such taxes will be subject to no substantial challenge, but challenge, nevertheless, will be fully open to appellant. It may be that the validity of the tax will be affected by numerous facts and circumstances yet to occur (compare *Hoopeston Co. v. Cullen* (1943) 318 U. S. 313; *Union Brokerage C. v. Jensen* (1944) 322 U. S. 202; *International Shoe Co. v. Washington*, No. 107, O.T., 1945, decided December 3, 1945; *O'Gorman & Young v. Hartf'd Ins. Co.* (1931) 282 U. S. 251, 257-258). The question is not one which can be anticipated and decided abstractly upon the

---

[9] *State Farm etc. Ins. Co. v. Carpenter*, 31 C.A. (2d) 178; *People v. Merrill*, 24 Cal. App. 206. Compare *Lincoln National Life Ins. Co. v. Read* (1945) ... U.S. ..., 89 L. Ed. 1250.

[10] Page 46 of this brief.

face of the statute alone; it is not properly before the Court on this appeal.

Further, until appellant has applied for and obtained a license it cannot be known whether any tax question or any other question under California statutes referred to by appellant, ever will arise. The license might be denied for incompetence or lack of trustworthiness (§1765). If such were the grounds of denial, supported by substantial evidence, no possible violation of the Commerce Clause would be involved.

> "The Commerce Clause is not violated by denial of the certificate to the appellant, if upon adequate evidence denial is deemed necessary to promote the public safety." (*Bradley v. Pub. Util. Comm'n* (1933) 289 U. S. 92, 96.)

And see,

Duckworth v. Arkansas (1941) 314 U. S. 390, 393-394.

Aside from the foregoing, we submit that the tax clearly is valid—either under Public Law No. 15[11] or quite apart from its provisions. The incidence of the tax is upon activities carried on in the State of California, in this case by a California resident. It is nondiscriminatory as compared to taxes imposed upon admitted companies, both foreign and domestic. Section 14¼ of Article XIII of the Constitution of California added to the Constitution November 3, 1942 (Statutes of California, 1943, pp. civ-cvi), imposes an annual tax upon admitted insurers, domestic or foreign, in respect of business done in Cali-

[11] Page 46 of this brief.

fornia subsequent to December 31, 1942. The tax is at a rate of 2.55 per cent for 1943 and lower percentages for succeeding years down to 2.35 per cent for 1947 and succeeding years, upon the amount of gross premiums upon business done in the state in the year. This tax is in addition to the taxes upon the real estate of such insurers (Constitution of California, Article XIII, §14⅘ (i) (1); Article XIII, §1). Subject to certain limitations, a fraction of the insurer's real estate taxes is deductible from this annual tax, but it is provided that this deduction shall diminish progressively to zero when the annual tax reaches the minimum in 1947 (Article XIII, §14⅘ (h)).

It is clear, moreover, that an exaction in an additional amount upon surplus line brokers as compared with domestic and admitted companies is warranted as an administrative charge to compensate the State for the greatly increased burden thrown on the State Insurance Department in connection with the supervision of unauthorized insurance. Under statutes enacted in 1907 it was required that an affidavit be executed and filed with the Insurance Commissioner in connection with every risk written in an unauthorized company (Cal. Stats. 1907, p. 146). In 1911 the act was amended to require a report to be submitted within one week of the procurement of the insurance (Cal. Stats. 1911, pp. 1270-1271). In 1937 there was a general revision of the California statutory provisions governing the operation of surplus line insurance (Cal. Stats. 1937, p. 2033, amending various sections of the Insurance Code and adding sections thereto), which threw a number of discretionary duties on the Insurance Commissioner, further changed the reporting system and amplified the various enforcement provisions, in addition

to giving the Comissioner rule-making power (Insurance Code, §§1760.5, 1763, 1775.5 and 1776 as amended by Cal. Stats. 1937, p. 2033).

Some picture of the burden thrown on the Insurance Department by the necessity, from 1907 to 1937, of examining statements of individual risks procured (or affidavits) in the case of surplus line insurance, may be visualized if one considers that in 1909 the premiums charged for surplus line marine insurance amounted to $45,632.48, whereas the marine insurance premiums in the authorized companies amounted to $1,952,269.99; but that for each surplus line marine risk an affidavit or statement had to be filed under the law and, for the protection of the public, examined by the Insurance Commissioner's Office, whereas, in the case of marine insurance placed in the authorized companies, having premiums over forty times greater in amount, no examination of the policy form or of the risk by the Insurance Commissioner was required (Forty-third Annual Report of the Insurance Commissioner, State of California, p. 9). Similar figures for the same year for fire insurance premiums were $217,419.60 for surplus line fire insurance as against approximately $15,094,210.60 for authorized fire insurance (Ibid., pp. 7-8). The premiums for the entire unauthorized insurance business placed from the State of California have seldom amounted to as much as one per cent of the business placed in authorized companies and yet the Insurance Commissioner has been obliged to examine a report on each risk, whereas there was no such requirement or necessity in the case of business of the authorized insurers. The business of the latter was submitted in tabular form on the annual statements

filed each year under §900 et seq., of the California Insurance Code, and the Commissioner by his routine examinations (Insurance Code, §730 et seq.) and the "convention" examinations under the auspices of the National Association of Insurance Commissioners, the expense of which was borne by the insurance companies (Insurance Code, §736) was enabled expeditiously to meet the requirements of supervision.

V.

THE CALIFORNIA STATUTES HERE INVOLVED DO NOT DISCRIMINATE AGAINST INTERSTATE COMMERCE.

Neither of the California licensing statutes here involved, nor any other of the California insurance laws referred to by appellant, are in any way discriminatory, but on the contrary they apply equally to foreign and domestic insurers and their agents. As pointed out above, §1642 of the Insurance Code requires that all persons acting as insurance agents, brokers or solicitors shall comply with the licensing provisions, regardless whether they represent or act for a foreign or a domestic insurer. The licensing requirement of §703(a) likewise is nondiscriminatory. The additional nominal requirements of a faithful performance bond and a fee of $50 are directly related to the supervision, and the cost thereof, of business placed with nonadmitted insurers. (See page 16 et seq. of this brief.) The statutory requirement in operation merely places persons acting for such insurers on the same basis as those who act for admitted insurers, foreign and domestic.

So, likewise, the solvency statutes of California, referred to in the next subdivision of this brief merely exact from foreign insurers the identical standards of integrity and fair dealing required of domestic insurers. (See page 23 et seq. of this brief.)

Appellant seeks in effect to obtain a ruling which will result in a foreign insurer having an advantage over domestic insurers. Certainly if California regulatory statutes, enacted for the public welfare in the exercise of the state's police power, are binding on domestic companies, while foreign companies and their agents may operate in California with impunity, then there is discrimination, but in favor of appellant.

VI.

THE PROVISIONS OF THE CALIFORNIA INSURANCE CODE UNDER WHICH THE SOCIETY FOR WHICH APPELLANT ACTED IS EXCLUDED FROM ADMISSION TO DO BUSINESS IN CALIFORNIA ARE VALID EXERCISES OF THE POLICE POWER OF THE STATE OF CALIFORNIA.

Appellant contends that the provisions of §10818 of the California Insurance Code (Appendix, p. viii) constitute a prohibition against his assisting in California in any transaction for the Society for which he acted.

A complete answer to this argument is that the validity of § 10818 was not challenged in, nor considered or passed upon by either court below. As we have shown the licensing provisions, for the violation of which appellant was convicted, are valid. This case does not involve the right of appellant to transact business as an *insurer* in California. In this connection we point again to the provisions

of § 1760 of the Insurance Code, which provides that any nonadmitted insurer may negotiate and effect insurance of any kind with a citizen of California. This applies to the Society for which appellant acted. The only prohibition is against appellant's acting as an *agent* in transacting that insurance within California, and we have shown that the statutes here challenged as applied to him, are valid.

Nevertheless, the question thus presented is of importance and we desire to meet it on the merits in so far as it lies within the jurisdiction of this Court.

The solicitation and sale for which appellant was convicted in this case were in behalf of the First National Benefit Society, which in its application for membership form (R. 29, 32) and policy form ("Gold Seal" Single Life Certificate, R. 30, 33) describes itself as a nonprofit cooperative corporation (R. 30), and a mutual benefit corporation (sixth paragraph, "Additional Provisions," R. 31).

It is apparent from the certificate of membership or policy issued to the insurer that the Benefit Society comes within the provisions of Section 10810 of the California Insurance Code (Appendix, p. vii), in that its policy is "* * * conditioned not upon fixed payments but upon the collection from time to time of stipulated premiums with provision requiring additional payments from insured members by assessment * * *" (third paragraph, "Additional Provisions," R. 31). This section limits the business of such insurance and the issuance of such contracts of insurance in the State of California to domestic corporations duly organized, and to foreign corporations duly

admitted, under Chapter 9 of the California Insurance Code, of which § 10810 is a part. This section provides:

> "Every contract whereby a benefit is to accrue to a person named therein through the death of the insured, or his physical disability from accident or sickness, or for the payment of any sum of money as an annuity or endowment, if the benefit is conditioned, not upon fixed payments but upon the collection from time to time of stipulated premiums with provision requiring additional payments from insured members by assessment, shall be a contract of mutual insurance on the stipulated premium plan; and the business involving the issuance of such contracts shall be carried on in this State only by duly organized corporations subject to this chapter."

Section 10818 (also a part of Chapter 9) prohibits the formation of new companies in California or further admission of foreign companies coming within the scope of Chapter 9, on and after January 1, 1940. This section provides:

> "On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to Section 10815, which, prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured 100 subscribers or applicants who have each paid the

> required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of one thousand dollars ($1,000) as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940."

While neither foreign nor domestic companies of the type described in Chapter 9 may, since January 1, 1940, be formed, there is nothing to bar domestic or foreign companies from transacting insurance in California if they are of the type authorized by California, meet California standards, and secure a certificate of authority from the Insurance Commissioner. In this regard, Section 700 of the Insurance Code provides:

> "A person shall not transact any class of insurance business in this State without first being admitted for such class. Such admission is secured by procuring a certificate of authority from the commissioner. Such certificate shall not be granted until the applicant conforms to the requirements of this code and of the laws of this State prerequisite to its issue. After such issue the holder shall continue to comply with the requirements as to its business set forth in this code and in the laws of this State."

If any insurance company desires to transact life insurance in California, provision is made therefor by Section 10510, which is applicable alike to foreign and domestic insurers, and provides for the issuance of licenses to do business in California.

Section 10510 reads as follows:

> "An incorporated life insurer issuing policies on the reserve basis shall not transact life insurance in this

State unless it has a paid-in capital of at least two hundred thousand dollars ($200,000)."

Section 36 of the Insurance Code defines "paid-in capital" as including the surplus of a mutual insurer. The effect of the two sections is to require that a stock company have a capital stock aggregating at least $200,000 and that a mutual company have a surplus of at least $200,000 in order to do business in California.

In other words, California statutes provide that foreign *or* domestic companies cannot now do a life insurance business except on a legal reserve basis and there are no exceptions, whether foreign or domestic companies, except as to companies existing and doing such business in California prior to January 1, 1940. The policy behind these statutes is that experience has shown that a mutual company doing business on the stipulated premium plan with right of assessment, without a sufficient surplus and full reserves, is not adequately safeguarded to insure that money will be available to pay death benefits. However, California permits such companies, foreign or domestic, without discrimination, operating in California prior to January 1, 1940, to continue in business in order to avoid destroying these businesses then existing. As will be shown hereafter, legislation also provided means for operation under the general law when sufficient funds were accumulated, and procedure for accumulating these funds.

The history, basis and justification for this legislation, designed to protect the solvency of insurers dealing with California insurance policyholders, are clearly set forth in the law and the reports of the Insurance Commissioner

of the State. These matters are discussed in detail in th following pages of this brief, to and including page 37.

Prior to 1934, Chapters IV and VI of Title II, Part IV of Division First of the Civil Code of the State of Cali fornia contained the provisions for operation of "mutua life and benefit associations" (secs. 437-452h, Civil Code and "life, health, accident and annuity or endowment in surance on the assessment plan" (secs. 453d-453t, Civi Code): On page XVIII of the Sixty-seventh Annual Re port covering the business year 1934 of the Insurance Commissioner, State of California, is found the follow ing statement of the then Insurance Commissioner:

> "The property, business, offices, books and records o the following fifteen mutual life and benefit associa tions, all operating in the County of Los Angeles i this State and claiming exemption under 452f of th Civil Code, from certain laws regulating the trans action of insurance business, were seized by E. For rest Mitchell, as Insurance Commissioner, on Decem ber 11, 1934: (names of the associations follow).
>
> Seizure of a number of other associations of th same type was prevented by the removal of thei books, accounts and records, from the State."

Examination of pages XIV and XV of the same repor of the Insurance Commissioner shows that there were in corporated in and operating in the State of California a that time twenty-nine of these so-called mutual benefi and life associations with over $100,000,000 of insurance in force, but total admitted assets of somewhat ove $85,000 and an admitted excess of assets over liabilities *other than policy liabilities* (reserves), of $10,000. Ex

amination of the provisions of said Chapter IV will disclose that these companies were not required by statute to maintain any life insurance reserves at all. Further examination of the tables in the last mentioned pages of the Report indicates that these organizations collected a total of over $1,200,000 during the year, paid losses of only slightly over $500,000, and had unpaid claims of almost $500,000. Consultation of pages XVI and XVII of the same Report of the Commissioner shows nine so-called "Chapter VI life, health, accident and annuity or insurance on the assesment plan" corporations, with admitted assets of slightly over $1,000,000, liabilities other than reserve of over $300,000, and total liabilities, including reserves, of over $1,000,000.

However, as will be shown later by the history of the legislation, while these reserves in total exceeded legislative requirements, this was because there were no *compulsory* legislative reserve requirements; hence at the same time there was, upon the standard life insurance basis of the American Experience Tables, a large reserve deficiency. The history of the legislation thereafter shows a continuous attempt to remedy this and other vices and evils, and a continuous insurance departmental effort to prevail upon those types of corporations to run their businesses upon a sound basis and one fair to their insureds.

The next comment of importance appears on page XX of the Sixty-eighth Annual Report of the Insurance Commissioner, State of California, which covers the business year 1935:

"Another such amendment to the Code revised the provisions of law relating to mutual benefit associations doing the business of life insurance on the assessment plan. New provisions included regulation of certificate forms used by these associations, requirement of approval by the Commissioner of such forms before issue is permitted, adoption of uniform assessment bases and, for the first time in California, expressly prescribing standards of financial conditions to which such associations must conform. Agents of these associations were also placed under the licensing law. As a result of this legislation, the duty of examining every form of policy issued by these associations devolved upon the Commissioner's office.

The necessity of raising the standards of mutual life and disability insurers (Chapter VI companies) operating on a stipulated premium basis with provision for assessment, resulted in another such amendment governing the conduct of these insurers. Heretofore these insurers had been required merely to deposit assets amounting in value to $25,000.00, without adequate requirement as to maintenance of reserve on policies. Policy forms had been unregulated. Changes included requirements that assessment liability be expressly stated in the policies, that certain standard provisions must be included, that agents must be licensed, and that the forms of policies must be approved by the Commissioner. Under another new requirement these insurers must maintain reserves of prescribed standards on their policies hereafter issued. Again the result has been to place in the Commissioner's office the duty of examining the policies of these insurers to determine conformity with law."

The passage of the Insurance Code in 1935 had transferred the provisions relating to "Chapter IV" (mutual benefit and life associations) to Chapter 8 of Part 2 of Division 2, Insurance Code, and the provisions relating to life, accident, and annuity or endowment insurance on the assessment plan corporations (Chapter VI companies) to Chapter 9 of Part 2 of Division 2, Insurance Code.

These companies will hereafter be referred to as "Chapter 8" and "Chapter 9" companies. The Chapter 9 companies are of the type for which appellant sought to act in this case. Section 10818, Insurance Code, is a part of that Chapter 9. The amendments to the law to which the Commissioner referred in his Sixty-eighth Annual Report, above quoted, are contained in California Statutes 1935, pages 657-685, repealing the original and adding new Chapters 8 and 9 of Part 2, Division 2, Insurance Code.

A survey of the problem involved had been set forth two years before this legislation in the Sixty-sixth Annual Report of the Insurance Commissioner, State of California, covering the year ending December 31, 1933. The comments therein form a basis for an understanding of the statements made in the Sixty-eighth Annual Report above quoted:

> "The increased appreciation of life insurance protection developed during the decade after the war, coupled with restricted incomes in the recent period, has created an increased demand upon the regular companies for the cheaper less permanent forms of term insurance and increased the opportunities for those concerns offering various forms of assessment insurance. In particular there were formed many associations claiming to operate under section 452f of the

Civil Code and to be exempt from the jurisdiction of this office. They advertised extensively beyond our borders, and brought much question and criticism of California insurance laws and practices from those who remembered the disappointments suffered by those who in the '80's and '90's placed their insurance in the 'Keep your reserve in your pocket' fraternal orders. Some were so outspoken as to characterize such organizations as 'rackets'. Indeed, recently one group has been indicted by the Federal Grand Jury in Los Angeles County for misuse of the mails.

On March 8, 1934, the Attorney General rendered me an opinion under which few of these 'associations' could be held qualified under that section. A group brought injunction proceedings against my acting under that opinion, but on trial the court dissolved the injunction. This will afford some help for the poorer class of our citizens, but even yet it appears that the provisions of our laws relating to assessment life insurance do not afford adequate protection for those trying to provide insurance for their families in this way. The law should be strengthened to prevent the taking of risks without proper investigation and the later use of the defense of breach of warranty to defeat the claim—an all too common practice; to require prompt and regular levying of assessments to meet claims and prevent stalling off of claimants or paying in driblets; and to assure that the associations shall be honestly conducted in the interests of their members. *The laws referred to are Chapters IV and VI of Division I, Part IV, Title II of the Civil Code.*

In particular the powers and duties of this office with regard to them should be made plain. As it now

stands there is grave doubt what, if anything, we can do when a Chapter IV association, in order not to reduce its membership whose dues furnish the salaries of the officers, fails to levy assessments with sufficient frequency to pay claims currently and allows them to accumulate until in some cases more than a year elapses between the death of the insured and the payment to his beneficiary; or when the management of a Chapter VI corporation makes a general agency or management contract with a corporation composed of its own officers, giving them as much as 15 per cent of the premium income which gives that corporation in the neighborhood of $100,000 annually in addition to the liberal salaries paid the officers themselves, and generous commissions to agents as well as salaries to supervisors of agents. Amendments of the law in recent years have confused rather than clarified these chapters. This is one of the most acute problems before this division and the economic and social status of those who patronize these associations make their protection the more imperative." (Sixty-sixth Annual Report of the Insurance Commissioner, State of California, pp. 10, 11.) (Emphasis supplied.)

Some of the important provisions of this legislation are the provisions of Article 10 of the above Chapter 8, consisting of sections 10739 to 10744, inclusive, Insurance Code. In this connection it must be remembered that the 1935 legislation for the first time imposed definite life reserve requirements upon Chapter 9 companies. Life insurance thereafter written by the Chapter 9 companies would have *some* required reserves, although again, owing to the deficient condition of many of them, it was neces-

sary to provide a period of five years within which they might be accumulated. (Insurance Code, sec. 10870, as enacted by Statutes 1935, ch. 282.) The provisions of the new legislation in respect to mutual benefit associations (Chapter 8 companies), which required that their policies be truthful and that the form be scrutinized by the Insurance Commissioner before sale, made it desirable for these companies to be able to show that business written by them would have some reserves behind it. For that reason Sections 10739 and 10740 were added to the Insurance Code by Chapter 283 of the Statutes of 1935 to provide for installment accumulation of the sum, $25,000.00, necessary to transform the so-called "Chapter 8" companies which relied upon assessment only, into "Chapter 9" companies, which charged a fixed premium subject to assessment, and had some reserves behind their policies. Accordingly, in 1936 four such companies transformed (Sixty-ninth Annual Report of the Insurance Commissioner, State of California, p. XVIII), and five more transformed in 1937 (Seventieth Annual Report of the Insurance Commissioner, State of California, p. XVIII). Furthermore, in 1935, provision was made whereby these organizations could secure funds by a sort of junior loan for the purpose of gaining the funds necessary to provide proper security for their policyholders. (Stats. 1935, pp. 667, 678.)

However, the essential unsoundness resulting from operation on such a small capital under a law which required that the policies be examined to eliminate misleading statements or misrepresentations and that some financial requirements be met, even though much less stringent than

generally the case with regard to reserve life insurance, led to a demand for similar transformation and provisions for more quickly securing the necessary capital to properly run an insurance company. The result was the enactment in 1939 of Chapter 321, adding sections 10950 to 10953.12 to the Insurance Code (Cal. Stats. 1939, p. 1609). These sections provided for procurement of capital from outside sources as capital stock in the case of Chapter 9 companies then existing, the thought being that either by securing advances under the 1935 statutes, or by selling stock under these sections, they would eventually qualify on the usual standard reserve basis for life insurance. At the same time the addition of Chapter 327 to the statutes (Stats. 1937, p. 1666) included the Section 10818 complained of by appellant to prevent the formation or operation in the State of California of any more life or accident organizations with deficient capital. (Seventy-first Annual Report of the Insurance Commissioner, State of California, p. XXIX, digesting the legislation without comment.) This was effective both as to organizations foreign and domestic to California. However, there was at the time one Nebraska corporation which was then operating and continued to operate under the law thereafter. This corporation continued to operate under that law until April 23, 1940, when it transformed so as to qualify as a mutual reserve casualty company and was licensed accordingly. (Seventy-third Annual Report of the Insurance Commissioner, State of California, p. XVII.) The effect of this legislation is shown by the tables on pages XXIV to XXVII of the Seventy-second Annual Report of the Insurance Commissioner, State of California, which shows that during that year there remained but four so-called

Chapter 8 companies and twenty-nine Chapter 9 companies listed as operating in the State. One such company, above mentioned, was in process of arranging its transformation, and by reason of uncertainty as to whether it would be under the Chapter 9 law at the end of the year, it is not listed in the Report. The reason is indicated by the citation to the Seventy-third Annual Report last above.

However, the combination of lack of capital upon which these companies were operating, as will be shown by a glance at the figures summarized from the balance sheets of these companies in any of the reports above referred to, together with that unscrupulousness of management referred to in detail in the quotation from the Sixty-sixth Annual Report above, was operating to produce an inevitable result. The following statement in the Seventy-third Annual Report of the Insurance Commissioner of the State of California at pages XXII XXIII summarizes the final action that was necessary:

> "In conformity with the previously announced policy of the Division of Insurance directed toward the rigid enforcement of all insurance laws and regulations, the Division in 1940 set important precedent in the hearings and court proceedings involving so-called Chapter 9 life and disability insurers.
>
> Chapter 9 life and disability insurers are so called because they are organized under and operate pursuant to the provisions of Chapter 9, Part 2, Division 2 of the Insurance Code which provides for mutual life insurers issuing policies on the stipulated premium plan with provision for assessment.
>
> Prior to the investigations and hearings which ultimately resulted in the conservatorship proceed-

ings, the Division received hundreds of complaints from every section of the country concerning alleged illegal practices of these companies. The records disclose the receipt of more than five hundred such communications within a year, specifying as grounds of complaint, fraudulent claim settlement, misrepresentations by agents, exorbitant salaries paid to officers and executives, and many other related wrongs. Having determined the extent of his authority in these matters through a ruling by the Attorney General, the Commissioner commenced proceedings against each of the twenty Chapter 9 companies and required each, upon a date specified to present evidence of their compliance with the laws of the State of California.

A thorough investigation of each company was made, the inquiry being directed to the activities of the executive officers, the treatment and settlement of claims of policyholders, the types of contracts being offered to the public, and the methods employed in selling such contracts, the salaries paid executives and employees, the types of overwriting and general commissions being paid for the acquisition of business, the expense or cost to the member of such a mutual corporation for the operation of the business, and the type, character, quality and value of the business being accepted. Disinterested expert witnesses in the fields of actuarial science and executive management of insurance companies were called upon to analyze the operation of these companies and testify in connection with the results of their analyses. Without exception the insurers were represented by competent counsel and were given a full opportunity not only to present evidence, but to cross examine and interrogate all persons called to testify. The combined records of these hearings comprise, exclusive of over one thousand exhibits, more than twelve thousand pages of testimony.

Almost without exception, the evidence showed that various parties, through proxy control or outright purchase, were operating these companies as proprietary interests for their own private gain, contrary to the express provisions of the Code and the fundamental concept of such mutual institutions. This as well as other practices found to be prevalent created a hazardous condition likely to result in financial instability or insolvency.

As a result of these hearings petitions seeking the appointment of the Insurance Commissioner as conservator were filed in the Superior Court and all petitions were granted without exception. In all, twelve insurers were taken over in 1940 and are set forth in Schedule 5 of Part 1 of this Report.

The plan to be submitted to the courts for the ultimate disposition of these companies has not yet been formulated. When it is considered that the economic status of the majority of these policyholders is such as to make the payment of premium a major item in their family budgets, it becomes important to devise a plan of rehabilitation through which the best interests of these policyholders will be protected.

Whatever the outcome, these hearings and seizures have had the important effect of serving notice on unscrupulous promoters that the insurance field is one in which their operations will not be tolerated. Insurance is more than a business, it has become so clothed with a public interest that it is now one of the most important of contemporary social institutions. In it millions have reposed their faith and upon its continued protection against the ravages of unsound and dishonest management rests the future security of these millions. This Division is enjoined with the duty of enforcing the laws designed to afford

this protection. It intends to continue the discharge of this duty with all the vigor and implements at its command."

Of these seizures, litigation in respect to several of these insurers reached a court of record. The facts set forth in the opinions in these cases furnish ample illustration of the dangers to the public welfare poised by these under-financed corporations. *Caminetti v. State Mutual Life Insurance Co.* (1942) 52 Cal. App. (2d) 321, 126 Pac. (2d) 165; *Caminetti v. Guaranty Union Life Ins. Co.* (1942) 52 Cal. App. (2d) 330, 126 Pac. (2d) 159; *Caminetti v. National Guaranty Life Ins. Co.* (1942) 52 Cal. App. (2d) 835, 126 Pac. (2d) 170.

Summarizing the history, then, we find that the legislation and reports reflect a definite and developing plan of legislative and administrative action on behalf of the public welfare by the appropriate governmental authorities of the State of California:

1. In 1934, the Insurance Commissioner seized a number of organizations operating in violation of the law. In reporting the seizure he noted others, technically complying with the law, but whose operations, owing to looseness and confusion of the then existing legislation, were inimical to the public welfare (Sixty-sixth Annual Report of the Insurance Commr., pp. 10-11).

2. In 1935, statutes were adopted tightening the loose administrative reins, forbidding organization or admission of any more completely "unreserved" and unfinanced organizations (mutual benefit life associa-

tions), permitting existing ones to accumulate or borrow some capital in order to qualify as partially financed organizations with *some* life reserve requirements (Stats. 1935, ch. 283, pp. 1002, 657). At the same time, similar legislation imposed definite reserve requirements on the partially financed organizations ("Life, etc., on the assessment plan" companies) and provided means for increases of their finances (Stats. 1935, pp. 667, 678). Both pieces of legislation were commented on and explained in the Commissioner's report of that year (Sixty-eighth Annual Report of the Insurance Commissioner, p. XX).

3. In 1937, additional legislation regulating the operation of mutual benefit associations to further honesty of operation was enacted (Stats. 1937, ch. 726, p. 2024).

4. In 1939, obviously in order to afford a means of quickly relieving a lack of capital in these partially-financed organizations, a means of selling stock with capitalization requirements less stringent than in the ordinary case was granted by the legislature to these organizations then operating, while at the same time organization or admission to the state of new or additional deficiently financed companies was forbidden (Stats. 1939, ch. 321, p. 1609).

5. In 1940, despite all the legislation above referred to, the Insurance Commissioner was compelled to take over more than half of the organizations referred to because of abuses noted by a predecessor in office in 1934 (Seventy-third Annual Report of the Insurance

Commissioner, p. XXII, cf. Sixty-sixth Annual Report of the Insurance Commissioner, pp. 10-11).

It is respectfully submitted that the above record of experience with organizations of the nature of the Society for which appellant acted is ample justification for California's refusal, embodied in section 10818, Ins. Code, to permit such organizations to operate commercially among her people, *whether organized within her borders* or organized in states not having equally high financial standards, so long as there be no Federal statute which under the commerce clause compels such permission. It should be noted that California at the same time permits organizations having qualities which assure their non-commercial character so to operate, under conditions safeguarding that character (Ins. Code, sec. 10490, et seq.).

The principles of law which sustain the validity of these statutes—and which equally reaffirm the validity of the licensing provisions first above discussed— are firmly established.

Under our American system of dual government, federal and state, a conflict of powers often requires reconciliation. It is fundamental that the federal Government has only those powers enumerated in the Constitution and those powers implied therefrom. Powers not granted to the federal Government, or prohibited by the Constitution to the states, are reserved to the states (Tenth Amendment, U. S. Constitution; *McCulloch v. Maryland* (1819) 4 Wheat. 316). Police power, the power to promote general prosperity as well as public safety, health and morals, remains reserved to the states. This power—the least

limitable of the exercises of government (*Hadacheck v. Sebastian* (1915) 239 U.S. 394)—has especial scope in the regulation of insurance. That business has uniformly been held to be a business affected with a public interest. Thus, in speaking of a state statute regulating insurance rates, the Supreme Court stated in *German Alliance Ins. Co. v. Lewis* (1914) 233 U.S. 389, 412:

> "Those regulations exhibit it to be the conception of the law making bodies of the country without exception that the business of insurance so far affects the public welfare as to invoke and require governmental regulation. A conception so general cannot be without cause. * * * The effect of insurance—indeed, it has been said to be its fundamental object—is to distribute the loss over as wide an area as possible. In other words, the loss is spread over the country; the disaster to the individual is shared by many, the disaster to a community shared by other communities; * * *
>
> Their (i.e. insurance companies) efficiency, therefore, and solvency are of great concern. * * *"

To the same effect are numerous decisions of this Court, e.g.:

National Ins. Co. v. Wanberg (1922) 260 U.S. 71;
Osborn v. Ozlin (1940) 310 U.S. 53;
La Tourette v. McMaster (1919) 248 U.S. 465.

La Tourette v. McMaster, last cited, is particularly in point in the case at bar, in that it recognized that since insurance is clothed with a public interest and subject to the regulatory power of the states, insurance agents, brokers and solicitors engaged in that business are subject to state regulation. The Court said (248 U.S. 467):

"* * * And it necessarily follows that, as insurance is affected with a public interest, those engaged in it or who bring about its consummation are affected with the same interest and subject to regulation as it is. A broker is so engaged—is an instrument of such consummation. The statute makes him the representative of the insured (Hooper v. California, 155 U.S. 648, 657), and his fidelity to both may be the concern of the state to secure."

Under the foregoing principles the statutes of California here involved are of unquestionable validity; similar laws have been uniformly sustained by this Court for nearly a century. The only occasion for this suit and for appellant's belated attack on these statutes is the decision of this Court in *U. S. v. Southeastern Underwriters Assn.* (1944) 322 U. S. 533. Nothing in that case lends any support to appellant's contentions. It long has been held that in cases where Congress has *not* exercised contradictory power under the Commerce Clause the police power of the states extends to and may be exercised for the public weal in the regulation of interstate commerce with respect to matters of local concern.

See the following decisions of this Court and the numerous cases cited therein:

S. C. Hwy. Dept. v. Barnwell Bros. (1938) 303 U. S. 177;

Parker v. Brown (1943) 317 U. S. 341;

Union Brokerage Co. v. Jensen (1944) 322 U. S. 202;

Southern Pac. Co. v. State of Ariz. ..... U. S. .....
65 S. Ct. 1515, decided June 18, 1945, No. 56, Oct. 1944.

In *Parker v. Brown*, supra, this Court said (317 U. S. 359-362):

"The governments of the states are sovereign within their territory save only as they are subject to the prohibitions of the Constitution or as their action in some measure conflicts with powers delegated to the National Government, or with Congressional legislation enacted in the exercise of those powers. This Court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken. • • •

• • • When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved. • • •

Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct', see DiSanto v. Pennsylvania, supra; cf. Wickard v. Filburn, supra, not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may

be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause."

The *Southeastern Underwriters Association* case, far from lending support to appellant's contentions, specifically applies the above principles to the business of insurance.

The Court was cognizant of the fact that attempts might be made to distort its finding into a holding that state regulation of foreign insurance companies doing business within its borders violated the Commerce Clause of the Constitution, and to forestall such an interpretation it reaffirmed the above principles and declared them applicable to the insurance business (322 U. S., 547-549):

"Another reason advanced to support the result of the cases which follows Paul v. Virginia has been that, if any aspects of the business of insurance be treated as interstate commerce, 'then all control over it is taken from the states and the legislative regulations which this court has heretofore sustained must be declared invalid'. Accepted without qualification, that broad statement is inconsistent with many decisions of this Court. It is settled that, for Constitutional purposes, certain activities of a business may be intrastate and therefore subject to state control, while other activities of the same business may be interstate and therefore subject to federal regulation. And there is a wide range of business and other activities which, though subject to federal regulation, are so intimately related to local welfare that, in the absence of Congressional action, they may be regu-

lated or taxed by the States. In marking out these activities the primary test applied by the Court is not the mechanical one of whether the particular activity affected by the state regulation is part of interstate commerce, but rather whether, in each case, the competing demands of the state and national interests involved can be accommodated. And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

We submit that the facts concerning the California regulatory statutes above set forth, and the principles and express adjudications in the cases above cited, demonstrate the need for, and sustain the validity of, section 10818 and the related provisions of the California Insurance Code. Likewise, they further demonstrate the validity of the licensing provisions discussed in both of the preceding sections of our brief.

VII.

CONGRESS HAS SHOWN THAT ITS INTENTION ALWAYS HAS BEEN AND CONTINUES TO BE, UNTIL CONGRESS SHALL OTHERWISE SPECIFICALLY ENACT, THAT THE STATES MAY REGULATE AND TAX THE BUSINESS OF INSURANCE.

The division of regulation of interstate commerce into two classes, first mentioned in *Cooley v. Board of Wardens of the Port of Philadelphia* (1851) 12 How. 299, that is, into matters requiring a national uniform regulation, if any, and matters subject to local control, resulted in the development of the theory known as Congressional "silence." By this doctrine is meant that as to matters national in character, if regulated at all, they should be regulated uniformly throughout the country, and that the silence of Congress on the subject must mean that Congress intended no regulation. Under such circumstances the states could not by regulation affect such matters. Thus in *Robbins v. Shelby County Taxing District* (1887) 120 U.S. 489, the Court stated (p. 493):

> "that where the power of Congress to regulate is exclusive (i.e., on subjects national in character) the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the states, except in matters of local concern only, as hereafter mentioned, is repugnant to such freedom."

And see,

West v. Kansas Natural Gas Co. (1911) 221 U.S. 229;

Missouri v. Kansas Natural Gas Co. (1924) 265 U.S. 298.

However, the principle of Congressional "silence" applies only where the nature of the regulation should be uniform nationally. The principle does not affect the legality of state regulation of local matters. Thus Justice Hughes in the Minnesota Rate Cases (*Simpson v. Shepard* (1913) 230 U.S. 352, 402) concluded:

> "But within these limitations there necessarily remains to the states until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending Federal intervention. * * * Our system of government is a practical adjustment by which the national authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible."

Further, it is clear that the principle of Congressional "silence" is not based on a specific provision of the Constitution, but rather is an inference drawn by the Courts from Congressional inaction. From this it follows that Congress may affirmatively nullify this inference by action advising that its silence is not to be construed as indicating that a particular matter shall be free from regulation.

The foregoing portions of our brief have demonstrated, we submit, that the regulatory statutes of California here involved are valid exercises of the police power within a field never subject to restriction under the so-called doctrine of congressional "silence" (compare *Minnesota Rate Cases*, quoted supra). Congress has never, either before or since the decision in the *Southeastern Underwriters* case, enacted any statute regulating the business of insurance. As said by this Court in the *Southeastern Underwriters Association* case, in referring to the long history of state regulation and taxation of insurance businesses (322 U. S., 548-549):

> "And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

If doubt existed, however, it clearly would be dispelled by Public Law 15, enacted March 9, 1945 (59 Stat. 33), in which Congress expressly provided that "the *continued* regulation and taxation by the several States of the business of insurance is in the public interest and that silence

on the part of Congress *shall not be construed* to impose any barrier" to such regulation or taxation, and by which Congress further expressly enacted that the insurance business and persons engaged therein shall, until Congress otherwise provides, be subject to the regulatory and tax laws of the several States.[12]

---

12 "An Act

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2 (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance; Provided, That after January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Sec. 3. (a) Until January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Anti-discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Sec. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the Na-

The power of Congress to make its intent known and effective by such an act is now beyond question.

International Shoe Co. v. Washington, decided December 3, 1945, No. 107, O. T. 1945.

In the case just cited this Court said (page 4 of slip opinion):

"Appellant's argument, renewed here, that the statute imposes an unconstitutional burden on interstate commerce need not detain us, for 53 Stat. 1391, 26 U. S. C. §1606(a) provides that 'No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.' It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens upon it. *Kentucky Whip & Collar Co. v. Illinois Central R. Co.*, 299 U. S. 334; *Perkins v. Pennsylvania*, 314 U. S. 586; *Standard Dredging Co. v. Murphy*, 319 U. S. 306, 308; *Hooven & Allison v. Evatt*, 324 U. S. 652, 679; *Southern Pacific Co. v. Arizona*, No. 56, 1944 Term, decided June 18, 1945, slip opinion p. 6."

---

tional Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 5. As used in this Act, the term 'State' includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 6. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected."

To the same effect is *Southern Pac. Co. v. Ariz.* (June 18, 1945) ___ U.S. ___, 65 S.Ct. 1515, in which this Court pointed out that *Congress*, if it acts, is the final arbiter as to whether the subject of legislation affecting interstate commerce is of such a national character that it is exclusively for federal control, or, on the other hand, whether the states may also legislate regarding it. In enacting Public Law 15, Congress exercised its power of defining "the distribution of power over interstate commerce" (*Southern Pac.* case, supra, 65 S.Ct., 1520), and, accordingly, this clearly expressed desire of Congress that the states continue to regulate insurance is conclusive.

The Act is an expression of the Congressional intent as that intent, with its resulting distribution of power, has existed from the beginning. It is a clear expression by Congress of its recognition of the need for state regulation of foreign insurance companies doing business within their borders and of an intention that the regulatory statutes of the states always have been and shall continue valid. As pointed out by this Court in the *Southeastern Underwriters Association* case, quoted above, the fact that the states long have regulated insurance creates a strong inference that existing state laws should not be invalidated. Public Law 15 removed any possible doubt as to what the congressional intention had been. Appellant's contention that the *Southeastern Underwriters Association* case strikes down the provisions of the California statutes regulating insurance, as applied to this case, would mean that individuals are now free to engage in the insurance business in California without complying with the most fundamental regulatory laws requiring common honesty and efficiency in the conduct of insurance business,

notwithstanding the fact that Congress has not at any time enacted any legislation which regulates insurance, and notwithstanding the fact that Congress expressly has indicated that its intention from the beginning has been and is that such regulatory laws are and shall continue to be valid until such time as Congress expressly shall occupy the field.

CONCLUSION.

The law has always been that the states have power to enact statutes of the type of which appellant was convicted and that they are effective as to agents of foreign insurance companies. The decision of this Court holding the business of insurance to be commerce, and when conducted over state lines to constitute interstate commerce subject to the federal anti-trust laws, does not change this precept.

There is a compelling practical reason founded on public policy and endorsed by the Congress of the United States why the California regulatory laws involved in this case should be upheld. Unless this appeal is affirmed, the result would be that any person, firm or group could engage in the insurance business and comply only with the laws of the state having the weakest regulatory laws by the simple expedient of operating from that state, but sending agents to the other states of the Union. Indeed it is conceivable that such operations could be conducted from foreign countries, perhaps having no effective regulatory laws which guarantee that insurance contract obligations will be paid to assureds when payments are due.

From the standpoint of agents and salesmen operating in California, a reversal of this case would mean that any person, unscrupulous or otherwise, could sell insurance in that state for a foreign insurance company with immunity, for there is no federal statute to control the situation. Such situation would result in depriving the public of the protection of the carefully thought out and long enforced laws enacted for its protection.

This Court has never held that state regulatory insurance laws of the type in question are unconstitutional. On the contrary it consistently has sustained them throughout the entire course of our national life. We do not believe that it intended to annul such laws by the decision in *U. S. v. Southeastern Underwriters Assn.*

Dated, San Francisco, California,
December 26, 1945.

Respectfully submitted,

M. ARTHUR WAITE,
District Attorney of Ventura County, State of California,
JULIEN G. HATHAWAY,
Deputy District Attorney of Ventura County, State of California,
ROBERT W. KENNY,
Attorney General of the State of California,
T. A. WESTPHAL, JR.,
Deputy Attorney General of the State of California,
HAROLD B. HAAS,
Deputy Attorney General of the State of California,
Attorneys for Appellee.

H. F. ORR,
Of Counsel.

(Appendix Follows.)

CALIFORNIA INSURANCE CODE.

Division 1, Part 2, Chapter 1.

§703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State:

(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State.

(b) In any manner advertising a nonadmitted insurer in this State.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this State.

In addition to any penalty provided for commission of the misdemeanors, a person violating any provision of this section shall forfeit to this State the sum of five hundred dollars ($500), together with one hundred dollars ($100) for each month or fraction thereof during which he continues such violation.

Division 1, Part 2, Chapter 5.

§1639. The purpose of this chapter is to protect the public by requiring and maintaining professional standards of conduct on the part of all insurance agents and insurance brokers acting as such within this State.

§1642. A person shall not act as an insurance agent, broker, or solicitor until a license is obtained from the commissioner, authorizing such person so to act.

§*1643.* Such license shall be obtained only on a written application in a form prescribed by the commissioner, stating the kinds of insurance which the applicant desires to transact. The commissioner may decline to act upon an incomplete or defective application until amendments or an amended application are filed with him which complete the prescribed form and are properly executed. He may prescribe the form of such amendments or amended application.

§*1648.5.* The commissioner shall not grant a license to act as an agent or broker:

(a) To any individual who is neither a citizen or national of the United States nor an applicant for such citizenship who has lawfully and properly filed a proper declaration or application therefor in a court constituted by a law of the United States, unless such person is licensed under this chapter when this section takes effect.

(b) To any minor.

(c) To any copartnership, association or corporation if any person named in the application to exercise agency or brokership powers cannot be licensed under subdivision (a) or (b) of this section.

§*1649.* The commissioner shall investigate the qualifications of the applicants. Except as otherwise prescribed in this article he may issue the license applied for to an applicant on a showing satisfactory to him that the following facts exist:

(a) The applicant is properly qualified to perform the duties of an insurance agent, broker, or solicitor.

(b) Granting the license will not be against public interest.

(c) The applicant intends actively and in good faith to carry on the business of insurance agent, broker, or solicitor.

(d) In the case of a corporate applicant, the articles of incorporation permit it to act as an insurance agent or broker.

(e) In the case of an association or copartnership applying for such a license, its articles of association or agreement of partnership do not forbid it from so acting.

(f) The license is not being secured for the purpose of writing of insurance as to which the right to take commission is limited by section 760, at a cost less than specified in such contracts.

(g) In the case of a person who has not held a license to act as an insurance agent, broker, or solicitor, covering the license period preceding the period covered by the license applied for, the applicant has within six months preceding the date of issue of the license, taken and passed the qualifying examination provided in this article.

(h) The applicant is of good business reputation.

§1674. The commissioner shall conduct or arrange for a written examination, to be given at least twice a year upon questions, prepared by the commissioner, as to the qualifications of applicants or members or officers of applicants to act as insurance agent, broker or solicitor.

§1675. The examinations shall be of sufficient scope to satisfy the commissioner that the applicants have sufficient knowledge of, and are reasonably familiar with, the insurance laws of the State and with the provisions, terms and conditions of the insurance which the license will authorize

them to transact and have a general and fair understanding of the obligations and duties of an insurance agent, broker, or solicitor.

§*1678*. The commissioner shall require in advance the following fees:

• • •

(b) For filing the application for each annual license of an individual agent, or solicitor, four dollars.

(c) For giving to any person the qualifying examination for a license under this article, five dollars.

• • •

(g) For filing the first amendment to an application or for filing the first amended application, one dollar.

§*1679*. (a) Unless sooner suspended, revoked or terminated, the license of every insurance agent, broker, or solicitor expires July 1st of each year unless application for renewal is filed as provided in subdivision (b).

(b) Application for renewal of such license may be filed on or before June 3d, upon payment of the renewal fee.

(c) Such license may be renewed upon application filed between June 3d and July 31st upon payment of the renewal fee plus an additional fee equal to the renewal fee.

(d) The commissioner shall mail notice for forfeiture of renewal rights not later than July 20th, to:

(1) The licensee.

(2) The employing agent or broker, if any.

(3) The appointing insurers, if any.

Failure to mail such notice shall not continue the right of renewal.

(e) Such license shall not be renewed after July 31st but the person may make application for a new license as provided in this code, and shall take and pass the qualifying examination.

Division 1, Part 2, Chapter 6.

§1760. Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer.

§1761. Except as provided in Sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located or operations conducted within, or on the lives or persons of residents of this State with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter.

§1763. A surplus line broker may solicit and place insurance, other than as excepted in section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as cannot be so procured may be procured for nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this paragraph where

the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or the lowest premium which could be obtained from an admitted insurer unless, at the time such insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest procurable rates from admitted insurers. Unless the commissioner within five days after such filing notifies the filing broker that in his opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect such insurance. If within such five day period the commissioner notifies the surplus line broker that such insurance is in violation of this section and orders the broker to effect termination of such insurance within ten days from such notice, and the broker fails or refuses to effect such termination, such failure or refusal is a violation of this section. Statements filed under this section shall not be subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made so subject. The commissioner may make and publish reasonable rules and regulations, consistent with this chapter, in respect to transactions governed thereby and the basis or bases for his determinations hereunder.

§*1765*. Upon application in such form as the commissioner prescribes, the commissioner shall issue a license authorizing any applicant that is trustworthy and competent to transact an insurance brokerage business in such manner as to safeguard the interest of the insured, to act as a surplus line broker from the date of such license until the first day of July succeeding, on the delivery to

the commissioner of a bond to the State of California in the sum of five thousand dollars with an admitted surety insurer conditioned that said licensee will fully and faithfully comply with the requirements of this chapter.

The commissioner shall charge and collect in advance a fee of fifty dollars for filing each application for a license to act as a surplus line broker.

§1775.5. Every surplus line broker shall annually, on or before the first day of July of each year pay to the Insurance Commissioner for the use of the State of California a tax of three per cent of the gross premiums upon business done by him under authority of his license during the preceding calendar year, less three per cent of return premiums paid by him by reason of cancellation or reduction of premium, excluding gross premiums paid and return premiums paid by him upon business governed by the provisions of section 1760.5.

Division 2, Part 2, Chapter 9.

§10810. Every contract whereby a benefit is to accrue to a person named therein through the death of the insured, or his physical disability from accident or sickness, or for the payment of any sum of money as an annuity or endowment, if the benefit is conditioned, not upon fixed payments but upon the collection from time to time of stipulated premiums with provision requiring additional payments from insured members by assessment, shall be a contract of mutual insurance on the stipulated premium plan; and the business involving the issuance of such con-

tracts shall be carried on in this State only by duly organized corporations subject to this chapter.

§*10818.* On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9 a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to section 10815, which, prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured one hundred subscribers or applicants who have each paid the required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of $1,000 as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940.